

**DISSENTING OPINION OF
JUDGE VIDAL-RAMIREZ**

I do not concur with the decision adopted in the judgment because it dismisses the preliminary objection claiming failure to exhaust local remedies. My reasons are as follows:

1. The case was filed on August 8, 1996, more than ten years after the disappearance of Nolberto Durand Ugarte and Gabriel Pablo Ugarte Rivera when the riot that broke out at El Frontón Prison on June 18, 1986, was quashed.

The application was filed for the Court to decide whether the provisions of the Convention had been violated and to order the Peruvian State to pay material and moral damages to the next-of-kin.

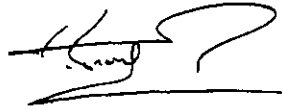
2. Given the circumstances surrounding the disappearance of Nolberto Durand Ugarte and Gabriel Pablo Ugarte Rivera and the time that has passed since, it is reasonable to presume that they are dead.

Peruvian law, embodied in the provisions of its Civil Code, spells out the procedure to follow to have the courts declare a person legally dead in circumstances such as those that caused the disappearance of Durand Ugarte and Ugarte Rivera.

The provisions of the Civil Code stipulate that if the courts declare a person dead, they shall proceed immediately to declare who the lawful heirs are.

3. Although Mrs. Virginia Ugarte Rivera, mother of Nolberto Durand Ugarte and sister of Pablo Ugarte Rivera, filed petitions seeking writs of *habeas corpus* and a petition with the Commission, her obvious and legitimate interest in ascertaining the situation of her son and her brother does not preclude the right of other heirs, as legal heirs, to share in the compensatory damages sought, in keeping with the inheritance laws in effect in Peru.

4. When this preliminary objection was entered, the Agent for the Peruvian State specified the procedures stipulated in Peru's Civil Code to have Nolberto Durand Ugarte and Gabriel Pablo Ugarte Rivera declared legally dead.
5. Finally, with the October 28, 1986 decision of the Court of Constitutional Guarantees, claimant Mrs. Virginia Ugarte Rivera still had one more remedy of *habeas corpus* available to her to establish the alleged violation of her son's and brother's right to life. With that, she would have exhausted local remedies once and for all.



Fernando Vidal-Ramírez
Judge *ad hoc*



Manuel E. Ventura-Robles
Secretary